



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 26, 1996

Mr. Dennis J. Eichelbaum  
Schwartz & Eichelbaum, P.C.  
General Counsel  
3700 Ross Avenue, Box 69  
Dallas, Texas 75204-5491

OR96-0085

Dear Mr. Eichelbaum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36145.

The Dallas Independent School District (the "school district") received a request for certain information. Although, the school district believes that the majority of the requested information is public and must be released, you ask whether a request for information may be made on behalf of another individual. You also seek to withhold the individual educational plan of a specific student.

You claim that chapter 552 does not state that persons may make requests on behalf of another person. However, at least two sections refer to such a request. Section 552.023(a) refers to "a person's authorized representative," and section 552.223 refers to "the person on whose behalf the request is made." *See generally* Open Records Decision No. 507 (1988) (special right of access of person or authorized representative). Although chapter 552 does not address what constitutes an authorized representative, the Open Records Act mandates that all requests for information be treated in a uniform manner without regard to the identity of the individual. Gov't Code § 552.223. The only time the identity of the requestor affects the release of requested information is when a specific statute provides for dissemination of information to specific individuals or when the information contains information about the requestor that would be protected by privacy. *See generally* Open Records Decision No. 507 (1988). Furthermore, the use that may be made of information does not control its availability, Open Records Decision No. 508 (1988), nor do the motives of the requesting party, Open Records Decision No. 542 (1990).

You further argue that if such a situation were allowed, a person who was in litigation with the school district could request information in someone else's name. We remind the school district that a governmental body may not practice selective disclosure. Open Records Decision Nos. 490 (1988), 464 (1987), 463 (1987), 192 (1978). Furthermore, if the school district claimed that such information was excepted under section 552.103, the litigation exception, and this office agreed with such a claim, the information would have to be withheld from all requestors, not just the individuals involved in the litigation. See Open Records Decision No. 518 (1989) (voluntary release to any member of public makes information subject to further disclosure), 436 (1986) (information that has already been publicly disclosed may not ordinarily be withheld in future), 412 (1984) (when members of public are permitted to examine information that could be withheld under Gov't Code subch. C, except for § 552.101, information becomes available to any person).

You do not raise a question of privacy in connection with the requested records. In fact, you have not raised any exceptions to disclosure in connection with the requested records. We fail to see the relevance of whether the requestor seeks the information on their own behalf or someone else's behalf. Accordingly, the information must be released.

Finally, you ask whether the individual educational plan of a specific student is excepted from required public disclosure under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. You have not submitted the individual educational plan to this office.

This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We remind you that this ruling applies only to "education records" under FERPA. "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). *But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records); Open Records Decision No. 431 (1985) (exceptions to required public disclosure do not authorize withholding of adult student's own "education record").

If you have questions as to the applicability of FERPA to information that is the subject of a request for information, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995) at 4 n.6, 8 n.9. Accordingly, Open Records Decision No. 634 (1995) is dispositive as to your student information question.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/LBC/rho

Ref: ID# 36145

Enclosures: Open Records Decision No. 634 (1995)

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(w/ enclosures -- Open Records Decision No. 634 (1995))